

**CONRAIL**

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| Post-It® Fax Note 7671 |                      | Date 4/9/99 | # of pages 2 |
| To ANN COYLE, Esq.     | From R B Griffith    |             |              |
| Co./Dept. EPA Reg. 5   | Co. Conrail          |             |              |
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EPA Region 5 Records Ctr.



247076

April 9, 1999

Ann Coyle, Esquire  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

**VIA TELECOPIER**Re: Access to Conrail Property, Tilton, IL

Dear Ms. Coyle:

This is in response to your letter dated April 8, 1999, which was telecopied to me at 5:25 p.m. EDT. I called you the morning of Friday, April 9, 1999 to discuss access to the Conrail property in Tilton, IL, but you have not yet returned my telephone call.

EPA is incorrect in interpreting CERCLA § 104(e), 42 U.S.C. 9604(e), as giving EPA the right to unconditional access to Conrail property. To the contrary, the statute specifically provides that entry must be "at reasonable times." 42 U.S.C. 9604(e)(3). Because of the serious hazards presented by entry onto Conrail property with an active rail line, it is unreasonable, arbitrary and capricious, and beyond EPA's statutory authority for the agency to demand that Conrail consent without limitation to access to the property.

Conrail cannot over-emphasize the danger to personnel of EPA, its contractors and to the general public if EPA and its contractors enter onto the property in the absence of reasonable safety precautions. Invasive work may damage Conrail signals and communications equipment, necessary to keep trains moving safely, or other underground utilities. Train accidents involving pedestrians can result in loss of life or limb. Collisions between trains and vehicles or machinery can lead to a derailment or locomotive fuel tank punctures, which at times may result in releases to the environment.

In other instances involving entry onto Conrail property pursuant to CERCLA, EPA has agreed to conditions, including that its contractors provide proof of insurance, to address

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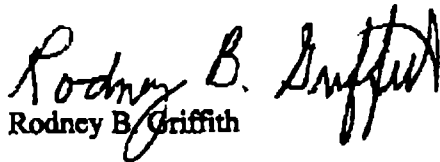
Conrail's concerns about safety. Also, Conrail in other instances involving EPA has not insisted that the agency agree to all provisions of the standard License Agreement that I sent you. Therefore, Conrail may be able to agree to eliminate requirements to which EPA objects. We need to discuss in detail the work that EPA wishes to perform on Conrail's property in order to work out what measures are necessary to ensure the safety of the personnel of EPA and its contractors and the general public.

Discussions also should involve consultation with any EPA contractors. It would be very surprising if EPA's contractors were willing to perform work on Conrail property under circumstances in which they lacked casualty insurance for occurrences that result in harm to third parties including Conrail.

Finally, we should discuss whether or not EPA needs access to property that Conrail in fact owns. I have just obtained information that leads me to question whether Conrail owns all of the property that EPA's documents identify as railroad right-of-way.

Please call me as soon as possible to discuss access to Conrail property.

Sincerely,

  
Rodney B. Griffith